

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LARRY BARBER,

Plaintiff,

vs.

STEVE WILLIAMS, *et al.*,

Defendants.

Case No. 2:13-cv-00538-GMN-CWH

ORDER

This matter is before the Court on Defendant Steve Williams' ("Defendant") Motion to Stay Discovery Pending Outcome of Criminal Investigation (#35), filed on March 4, 2014. The Court also considered Plaintiff's Response (#39), filed on March 13, 2014. In addition, this matter is before the Court on Plaintiff's Motion for Leave to File Fourth Amended Complaint (#40), filed on March 13, 2014. Defendant seeks a stay of discovery because a related criminal case proceeding is ongoing, trial is not scheduled until July 28, 2014, and the Clark County District Attorney is reviewing the investigation. Plaintiff does not oppose a stay of discovery and requests that the stay be imposed until September 1, 2014.

DISCUSSION

Courts have broad discretionary power to control discovery including the decision to allow or deny discovery. *See e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988); *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). This power to stay is "incidental to the power inherent in every court to control the disposition of the causes of action on its docket with economy of time and effort for itself, for counsel, and for litigants." *Id.* In exercising its discretion, the court must consider factors like, "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Colorado River Water Conserv. Dist. v. United States*, 424 U.S. 800, 817 (1976).

1 An overly lenient standard for granting a motion to stay would result in unnecessary delay
 2 in many cases. That discovery may involve inconvenience and expense is not sufficient to support
 3 a stay of discovery. *Turner Broadcasting System, Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D.
 4 Nev. 1997).¹ Rather, a stay of discovery should only be ordered if the court is convinced that a
 5 plaintiff will be unable to state a claim for relief. *See Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597,
 6 603 (D. Nev. 2011); *see also Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) (*per curiam*).
 7 Ultimately, the party seeking the stay “carries the heavy burden of making a ‘strong showing’ why
 8 discovery should be denied.” *Id.* (citing *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th
 9 Cir.1975)). Moreover, a court should not grant a stay absent a showing of hardship if “there is even
 10 a fair possibility that the stay . . . will work damage to someone else.” *Dependable Highway*
 11 *Express, Inc. v. Navigators Insurance Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007). Therefore, the
 12 court must balance the competing interests affected by a stay such as, the “hardship or inequity
 13 which a party may suffer in being required to go forward.” *Lockyer v. State of California*, 398 F.3d
 14 1098, 1110 (9th Cir. 2005).

15 The Court finds that the Defendant has made the strong showing necessary to support the
 16 requested stay. Defendant contends that a stay is necessary to protect his 5th Amendment privilege
 17 against self-incrimination, review of the investigation by the DA, and allow for the completion of
 18 the related criminal proceeding. More specifically, Defendant asserts that the civil and criminal
 19 matters are almost identical as to subject matter and proceeding with discovery in this case would
 20 force witnesses to forgo their Fifth Amendment rights. Plaintiff does not oppose a stay as long as
 21 he is provided with the opportunity to conduct discovery at a later date. In fact, Plaintiff requests
 22 that the stay be imposed only until September 1, 2014. This proposed date is a federal holiday, so
 23 the Court will modify it to September 2, 2014. However, the Court finds that a stay of discovery is
 24 warranted to promote efficiency and justice. Plaintiff is not prejudiced because he does not oppose
 25 Defendant’s request for a stay. Additionally, there are no pending motions or trial date in this
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 28 ¹ As noted in *Tradebay*, “[t]he fact that a non-frivolous motion is pending is simply not enough to warrant a blanket
 stay of all discovery.” 278 F.R.D. at 603.

1 matter. Further, the delay of time is not substantial given that there is a parallel criminal
2 proceeding. Finally, the Plaintiff filed a motion for leave to file his fourth amended complaint. In
3 light of the stay, the Court will deny this motion without prejudice. Plaintiff may renew his motion
4 once discovery commences after the stay is lifted. Additionally, the Court will require the parties
5 to submit a new joint proposed discovery plan and scheduling order after the stay is lifted.

6 Based on the foregoing and good cause appearing therefore,

7 **IT IS HEREBY ORDERED** that Defendant Steve Williams' Motion to Stay Discovery
8 Pending Outcome of Criminal Investigation (#35) is **granted**.

9 **IT IS FURTHER ORDERED** that discovery shall be stayed until the earlier of September
10 2, 2014 or the criminal proceedings against Defendant Steve Williams are complete.

11 **IT IS FURTHER ORDERED** that the parties shall file joint status reports on **May 13,**
12 **2014** and on **August 1, 2014** regarding the status of the criminal proceedings and necessity of the
13 stay.

14 **IT IS FURTHER ORDERED** that the parties shall file a joint proposed discovery plan
15 and scheduling order within 10 days after the stay expires or no later than **September 12, 2014**.

16 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Leave to File Fourth Amended
17 Complaint (#40) is **denied without prejudice** given that a stay has been imposed and may be
18 renewed once the stay is lifted.

19 DATED this 14th day of March, 2014.

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22 **C.W. Hoffman, Jr.**
23 **United States Magistrate Judge**
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